

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>MARTIN ORTEGA</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 227,297
<b>CIMARRON DAIRY</b>	)	
Respondent	)	
AND	)	
	)	
<b>UNINSURED</b>	)	
Insurance Carrier	)	
AND	)	
	)	
<b>KANSAS WORKERS COMPENSATION FUND</b>	)	

**ORDER**

Respondent appeals from a preliminary hearing Order entered by Special Administrative Law Judge William F. Morrissey on May 4, 1998.

**ISSUES**

There appears no dispute that respondent was engaged in an "agricultural pursuit," as that phrase is used in K.S.A. 1997 Supp. 44-505(a)(1). The issue on appeal is whether respondent had, by purchase of insurance or otherwise, elected to come under the provisions of the Workers Compensation Act.

The Special Administrative Law Judge entered an Order requiring respondent to pay preliminary hearing benefits. For the reasons stated below, the Appeals Board concludes that the Order should be reversed.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Claimant alleges sustaining an injury while he was cleaning a scale used to weigh dairy cattle. The evidence establishes that during an initial construction phase of the dairy facility, respondent purchased workers compensation insurance coverage. Respondent acknowledges that it intended to come within the Workers Compensation Act during that period of time. It appears that no election was filed. Once the initial construction phase was completed, respondent determined then it was no longer necessary to purchase workers compensation coverage and terminated the policy. For approximately three months

before the policy was canceled, the respondent posted signs in both Spanish and English informing employees of the change. Claimant was injured August 8, 1997, after the respondent had terminated its insurance coverage.

The Special Administrative Law Judge ordered benefits to be paid, citing a prior Appeals Board decision on Schneider v. Hensleigh, Docket No. 170,986 (February 1994). Respondent argues that the present facts differ materially from those of Schneider and the Appeals Board agrees. In that case, respondent advised its employees they would be covered by workers compensation insurance and, in fact, purchased such insurance. The respondent did not, however, file the necessary election. In Schneider, the claimant was injured during the period of insurance coverage and the Board found that the purchase of insurance, even in the absence of a filed election, brought the respondent under the provisions of the Workers Compensation Act.

In this case, there was no insurance coverage at the time of the accident, no election filed, and there was no representation to the employees that they would be covered. Based upon these material differences, the Appeals Board concludes the respondent is not covered by the Kansas Workers Compensation Act.

The Board considers this issue to be a jurisdictional one. It goes to the fundamental question whether the Kansas Workers Compensation Act applies and, therefore, whether the Special Administrative Law Judge has jurisdiction to enter an order for workers compensation benefits to be paid by respondent.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Special Administrative Law Judge William F. Morrissey on May 4, 1998, should be, and the same is hereby, reversed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1998.

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BOARD MEMBER

c: Stanley R. Ausemus, Emporia, KS  
D. Shane Bangerter, Dodge City, KS  
Wendel W. Wurst, Garden City, KS  
William F. Morrissey, Special Administrative Law Judge  
Philip S. Harness, Director